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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re K.R., a Person Coming Under the
Juvenile Court Law.

H034121
(Santa Clara County
Super. Ct. No. JV35229)

THE PEOPLE,

Plaintiff and Respondent,

v.

K.R.,

Defendant and Appellant.

The appeal herein is authorized by California Welfare and Institutions Code section 800, subdivision (a). The minor K.R. appeals from the dispositional order in a juvenile court proceeding pursuant to Welfare and Institutions Code section 602.

A juvenile wardship petition pursuant to Welfare and Institutions Code section 602 was filed by the Santa Clara County District Attorney on December 22, 2008, charging a count of misdemeanor driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), and a second count, a misdemeanor offense of driving with a blood alcohol level of 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b).

Appellant was involved in an automobile accident as a passenger but had left the scene after the accident. Officers called her and asked her to return so that they could talk with her. She returned driving a pick-up with her mother as a passenger. This detail was disputed at the trial with both appellant and her mother testifying that when she returned to the scene of the accident it was her mother who drove the vehicle with appellant as passenger. A police officer, however, testified to the contrary. The officer, Barry Knudson, detected alcohol on appellant's breath, gave her a breath test and then cited her for driving under the influence. The trial court sustained the petition, granted appellant probation, a condition of which was that she not "knowingly associate with probationers, parolees, or gang member." It is this latter condition that is the sole basis for the appellant's appeal.

The Attorney General agrees that the gang probation condition should be modified to reflect that a gang is a criminal street gang under Penal Code section 186.22.

We have written recently in *In re H.C.* (2009) 175 Cal.App.4th 1067, on the subject of probation conditions. "While defendant did not object to the probation conditions when they were imposed in the juvenile court, we do not deem the issue waived on appeal. In *In re Sheena K.* (2007) 40 Cal.4th 875, 889 . . . , the California Supreme Court held in a juvenile case that a failure to object to a probation condition on the ground that it is unconstitutionally vague and overbroad is not waived on appeal. We apply the same rule to this case.

" 'A probation condition is subject to the "void for vagueness" doctrine, and thus "must be sufficiently precise for the probationer to know what is required of him. . . ." ' (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630 . . . (*Lopez*)). 'The underlying concern of the vagueness doctrine is the core due process requirement of adequate *notice*:

[¶] "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." . . . [Citations.] " . . . [¶] Thus, a law that is 'void for vagueness' not only

fails to provide adequate notice to those who must observe its strictures, but also ‘impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’ ” (Ibid., quoting *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115-1116 . . . (Acuna).) *Acuna* involved the defendants’ attack on a preliminary decree obtained by the City of San José that enjoined them from associating with other gang members. At issue was the existence of a knowledge requirement in the injunction. There, the court acknowledged that ‘the City would have to establish a defendant’s own knowledge of his associate’s gang membership to meet its burden of proving conduct in violation of the injunction. Far from being a “classic” instance of constitutional vagueness, however, we think the element of knowledge is fairly implied in the decree. To the extent that it might not be, we are confident that the trial court will, as the Court of Appeal did in *People v. Garcia* (1993) 19 Cal.App.4th 97, 103 . . . [(*Garcia*)], impose such a limiting construction . . . by inserting a knowledge requirement should an attempt be made to enforce that paragraph of the injunction.’ (*Acuna, supra* 14 Cal.4th at p. 1117, italics omitted.)

“In *Lopez*, the Court of Appeal concluded that, unlike the injunction in *Acuna*, a probation condition that prohibited the defendant from becoming involved in ‘ “gang activities,” ’ associating with ‘ “gang members” ’ and wearing, possessing or displaying ‘ “gang insignia” ’ was both overbroad and void for vagueness. (*Lopez, supra*, 66 Cal.App.4th at pp. 622, 628-629.) The court modified the condition to state that the defendant ‘ “is not to be involved in or associate with any person *known to defendant* to be a gang member” ’ and that ‘ “the word [‘]gang[’] means a [‘]criminal street gang[’] as defined in Penal Code section 186.22, subdivisions (e) and (f).” ’ (*Id.* at p. 638, italics added.)

“Similarly, in *Garcia, supra*, 19 Cal.App.4th 97 (*Garcia*), the appellate court limited a probation condition that prohibited the defendant from associating with certain

groups of persons (drug users and sellers and felons) because the condition was not ‘sufficiently narrowly drawn’ and did not require that the defendant have knowledge of the status of these persons. (*Id.* at p. 102.) The court modified the condition to prohibit knowing association with those persons. (*Garcia, supra*, 19 Cal.App.4th at pp. 102-103.)

“Both *Lopez* and *Garcia* hold that ‘probation conditions that implicate constitutional rights must be narrowly drawn . . .’ and that the knowledge requirement generally “should not be left to implication.’ (*Garcia, supra*, 19 Cal.App.4th at p. 102.)” (*In re H.C., supra*, 175 Cal.App.4th at pp. 1069-1071.)

We recognize this condition as being part of a multi-page standard set of conditions in wide use in the Santa Clara County Superior Court. We have noted previously that the uncritical use of this form violates the law.

The condition shall be modified as follows: The appellant herein K.R. shall not associate with persons known to her to be probationers, parolees or members of a criminal street gang as defined in Penal Code section 186.22.

DISPOSITION

With the modification shown in the body of this opinion, the judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

ELIA, J.

DUFFY, J.